IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELALTE SIDE

APPEAL FROM ORDER NO.673 OF 2005

Megha Property Developers Pvt.Ltd. & Ors. ...Appellants.
Vs.
Haresh Lalwani. ...Respondent.

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Mr. Chirag Balsara i/b. KMC Legal Venture for the Appellants.
Mrs. Sunanda R. Kumbhat for the Respondent.

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CORAM : DR. D.Y. CHANDRACHUD, J.

November 14, 2005.

P.C.:

Admit. By consent of Counsel taken up for hearing and final disposal.

2. This Appeal from Order arises out of an interlocutory order passed by the Third Joint Civil Judge, Senior Division, Thane, on 13th April 2005, by which the Appellants, who are the Original Defendants, have been restrained from creating any third party interest or from parting with the possession of the suit shop until the disposal of the suit.

3. The agreement between the parties was for the sale of

premises consisting of a shop in a building which was to be constructed by the Appellants. A letter setting out the terms was endorsed by the Respondent in token of acceptance of the terms and conditions. The Appellants agreed to sell to the Respondent, Shop No.31, admeasuring 425 sq.ft. at and for a consideration of Rs. .8,39,000/-. A payment schedule was appended to the letter. According to the Appellants, the Respondent failed to adhere to the payment schedule and eventually on 2nd June 1998, a final notice was issued to the Respondent calling upon him to pay an amount of Rs.2,24,212/- failing which it was stated that the agreement would stand cancelled. The notice required payment to be made on or before 13th June 1998. On 3rd August 1998, the Appellants informed the Respondent that the agreement was rescinded upon the failure of the Respondent to make the payment due and outstanding. After the receipt of the aforesaid letter, the Respondent addressed an advocate's notice dated 7th October 1998 contending that apart from an amount of Rs.3,80,000/- that was paid by cheque, an additional amount of Rs.3,50,000/- was paid in cash. In the course of the aforesaid letter, the Respondent's Advocate stated that the Appellants have been able to complete the construction only until the stage of the ninth slab

and that the construction was at a stand still. In the circumstances, the Respondent called upon the Appellants to refund an amount of Rs.7,30,000/- together with interest at the rate of 24% p.a. within fifteen days of the receipt of the letter. On 8th December 1998, the Appellants in reply denied the receipt of a cash consideration of Rs.3,50,000/- as alleged and offered to pay an amount of Rs.86,591/- to the Respondent after the deduction of an amount of Rs.2,10,000/- and certain other amounts in lieu of interest. The Appellants stated that they have been able to dispose of the flat after the termination of the agreement, at a lower price of Rs.6,48,000/- and hence sought to claim the difference.

4. A suit was instituted before the Trial Court over five years after the date of termination, on 9th October 2003. An application for interim relief was moved in that suit which has resulted in the impugned order of the Learned Trial Judge. On behalf of the Appellants it has been submitted that (i) The suit which was instituted over five years after the date of termination, was ex-facie barred by limitation and in any event having regard to the nature of the delay, no case for the grant of interim relief was made out; (ii) The Respondent was not entitled to an order of

injunction, having sought a refund of an amount of Rs.7,30,000/- in their Advocate's letter dated 7th October 1998 since that would demonstrate an absence of readiness and willingness on the part of the Respondent to fulfill the contract; (iii) The reasons which have weighed with the Learned Trial Judge in granting an injunction are ex-facie erroneous and there was no question of the Appellants being required to furnish an opportunity of being heard to the Respondent as is held by the Learned Trial Judge. On the other hand, it has been urged on behalf of the Respondent that the purported agreement under which the Appellants sold the flat to a third party is unregistered. Moreover, it is submitted that the claim for refund of the consideration was made without prejudice to the contention of the Respondent that the agreement is valid and subsisting.

5. The Learned Trial Judge, in my view, on an evaluation of the case made out for the grant of interim relief ought not to have ignored the fact that the suit was instituted over five years after the termination of the agreement. The agreement was in any event terminated on 3rd August 1998, if not earlier, in pursuance of the final notice of termination dated 2nd June 1998. The suit was

instituted only on 9th October 2003. The grant of an interlocutory order of injunction is a matter of discretion to be exercised on sound judicial consideration. This is quite apart from the question of limitation, which is, in my view, a substantial defence in the facts of the present case. A Plaintiff who seeks the grant of interlocutory relief cannot legitimately be heard to claim such a relief when he has slept over his rights for a period of time in circumstances in which the delay is unexplained. That apart, it is apparent from the letter of the Respondent's Advocate dated 7th October 1998 that the Respondent was of the view that the Appellants were not in a position to complete the construction of the building and on that basis, a refund of the consideration was sought.

6. In these circumstances, prima facie, no case for the grant of an interim injunction was made out. At the same time, I am of the view that it is an admitted position that an amount of Rs.3,80,000/- has been paid by the Respondent to the Appellants towards the purchase consideration of the sale of the shop. I am inclined to vacate the order of injunction conditional on the Appellants depositing an amount of Rs.3,80,000/- before the Trial Court. Counsel appearing on behalf of the Appellants has

accepted this course of action and states that this amount would be deposited within a period of four weeks from today. The amount upon deposit shall be invested by the Trial Court in a fixed deposit of a Nationalised Bank, initially for a period of one year. The amount shall lie in deposit and shall be renewed pending disposal of the suit. Conditional on the aforesaid amount being deposited and only upon deposit of the aforesaid amount, the order of injunction passed by the Learned Trial Judge on 13th April 2005 shall stand vacated. The aforesaid deposit shall be without prejudice to the rights and contentions of the parties. The appeal is accordingly disposed of. There shall be no order as to costs.

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